

Hearing

Page 11

1 need to be filled one way or the other, and, at that  
2 point, I am going to then adjourn the process, let you  
3 pursue that discovery and come back to me with your  
4 supplemental, in short order, come back to me with your  
5 supplemental materials on those two -- one, two,  
6 whatever it is, missing issues and then you can make a  
7 decision based on the full record.

8 SPECIAL MASTER POPPITI: Okay. I sincerely  
9 appreciate your clarification. It's likely not to have  
10 been something that you did or didn't say in your  
11 submittal. It's more likely to have been the Codeine  
12 and cough medicine that I have been taking.

13 Now I do understand because I expected that  
14 it was, to some extent, a start and stop with discrete  
15 decisions being made along the way. But I do understand  
16 what you are proposing now.

17 Thank you for doing that, Mr. Miller:

18 MR. MILLER: You are welcome.

19 SPECIAL MASTER POPPITI: Who is going to  
20 speak on behalf of --

21 MR. CHRISTENSON: Cass Christenson for LPL.

22 SPECIAL MASTER POPPITI: Yes, please.

23 MR. CHRISTENSON: Thank you. Our view is, I  
24 think we all agree that there is a certain logical

## Hearing

Page 12

1 impact and practical impact that could result on some of  
2 these issues depending on how you rule on certain other  
3 issues, so our proposal was to structure the process in  
4 logical steps that recognized what impact certain early  
5 rulings might have. And some of those early rulings  
6 then could moot or avoid the need for further briefing  
7 or further hearing on other issues.

8           So that would allow Your Honor to make  
9 decisions as necessary. It would also avoid doing  
10 unnecessary work for all of us, and that's consistent  
11 with the principle that we cited in the cases that the  
12 fee litigation is distinct from the merits litigation  
13 and the fee litigation should be kept to an efficient  
14 minimum process, if you will.

15           So, our hope was to first focus on work  
16 related to exceptionality --

17           SPECIAL MASTER POPPITI: Let me ask this  
18 question in light of what you have said before you get  
19 into any of the detail. That does identify my concern  
20 about start and stop because as soon as I put pen to  
21 paper and call it a finding and report and  
22 recommendation, then it seems to me, unless I do  
23 something and you all agree that I do something with the  
24 caption of that document, it is ripe for attention under

Hearing

Page 13

1 the Rule 53. And it could very well lead to a start and  
2 stop and literally wait for the Court to turn its  
3 attention to it.

4 And I am not convinced that there is -- that  
5 whatever efficiency may be gained by doing it in that  
6 fashion may be lost by virtue of the Rule 53 process.  
7 And I could certainly envision, whether it's one, two,  
8 or three discrete, up front issues, I could certainly  
9 envision a circumstance where you have worked with me, I  
10 provide you with my view of the matter, you then,  
11 consistent with the rule, exercise your respective  
12 rights to say yes or no, and your briefing schedule,  
13 just the briefing schedule, itself, is going to take you  
14 beyond the new year unless the Court agrees to some  
15 different briefing schedule.

16 Because, I mean, I am not aware of a  
17 circumstance in any of the Special Master work that I  
18 have done -- and, local counsel, if you are, please tell  
19 me -- where after a Special Master does his or her work,  
20 the Court then entertains an application to alter the  
21 briefing schedule that the Court uses traditionally in  
22 all applications to the Court.

23 So I think I am correct in saying, Were you  
24 to serve up discrete applications in, let's say, a week

Hearing

Page 14

1 or two, and even if I impose a deadline on myself after  
2 you have closed submittals on those discrete issues,  
3 once I meet my own deadline, if you throw it into the  
4 traditional briefing schedule of the Court, you are into  
5 the new year.

6 And I would have to -- I'd have to  
7 anticipate, at least based on what I know now and how I  
8 have seen both parties litigate this case up to this  
9 point, I almost have to anticipate that whatever I do,  
10 one side or the other is going to take an exception  
11 because we are at a -- certainly a very different phase  
12 of winding down this lawsuit to no activity.

13 I am just not sure -- and help me with this,  
14 I'd like to hear your comments -- I am not sure that  
15 doing it in the fashion that you are proposing results  
16 in the ultimate efficient use of both your time and the  
17 Court's time.

18 MR. CHRISTENSON: From LPL's perspective, we  
19 certainly agree that we should try to be efficient, and  
20 I am not suggesting that, with every one of the issues  
21 and submissions, that we should have a situation where  
22 you issue a report and then any exceptions are taken and  
23 fully resolved before you proceed to the next set of  
24 submissions.

Hearing

Page 15

1 I agree that that would not be an efficient  
2 process.

3 What our concern is that we don't want to be  
4 in a position where we are briefing issues or conducting  
5 discovery that you may determine is not necessary  
6 depending on how you rule on certain other issues. And  
7 we certainly recognize that it may take -- this process  
8 may take us into the next year depending on what  
9 happens. For example, if there is supplemental  
10 discovery to be considered and completed, it's pretty  
11 clear to me that that likely is going to take us into  
12 the next year given the fact that the briefing hasn't  
13 started yet.

14 SPECIAL MASTER POPPITI: Right.

15 MR. CHRISTENSON: And I don't think that's a  
16 problem. I don't think anyone is prejudiced by that.  
17 But -- so I am not suggesting that we should do sort of  
18 each separate set of issues to conclusion before we pick  
19 up the next set. I think there can be some overlap on  
20 some of these issues.

21 But with respect to exceptionality, for  
22 example, it seems to make sense to first look at that  
23 issue as a threshold issue. In fact, probably to first  
24 look at the pavilion party issue under dismissals

## Hearing

Page 16

1 because that could, you know, that could avoid the need  
2 to even get into the merits under Section 285,  
3 potentially. But I think, for that issue, it makes  
4 sense to do it in the logical progression, and I think  
5 that's consistent with the approach that the cases that  
6 both sides have cited to Your Honor contemplate.

7 SPECIAL MASTER POPPITI: Mr. Miller, are  
8 there up front issues that can be submitted, decided on  
9 a fast track, and I guess it would almost have to be,  
10 with some agreement, that if, by virtue of the early on  
11 decisions, we could talk about what they would need to  
12 be, the matter is poised to go forward, but there would  
13 be an agreement not to take exception until the end of  
14 the process.

15 On the other hand, if the determination is  
16 to -- if, by virtue of the determination, everything  
17 stops, for example, on the building motions to dismiss,  
18 if I conclude and recommend that there should be a  
19 dismissal without prejudice, I am assuming you would all  
20 agree that if it's without prejudice, the matter stops;  
21 do you all agree to that?

22 MR. CHRISTENSON: LPL agrees.

23 MR. MILLER: I don't think I have found a  
24 case yet that tells me it has to stop.

Hearing

Page 17

1 SPECIAL MASTER POPPITI: We have been  
2 looking around.

3 MR. MILLER: You know, so I am not sure I  
4 can agree to that.

5 SPECIAL MASTER POPPITI: And I understand  
6 that.

7 MR. MILLER: I don't see any case that tells  
8 me it has to. I recognize that the language of the case  
9 certainly, you know, intimates that a dismissal without  
10 prejudice is a barrier or some kind of a threshold you  
11 would have to further climb over to get through  
12 potentially. But there is no -- I haven't found any  
13 case law that requires that.

14 SPECIAL MASTER POPPITI: And perhaps therein  
15 lies my point. I mean, if it's a matter of that I rule  
16 that, and perhaps I should subsume in the ruling, if it  
17 is with prejudice, then I don't think anyone would  
18 disagree with me that that permits the -- that gets you  
19 to the door and you open the door at least with respect  
20 to the issue of prevailing party.

21 Mr. Christenson, do you disagree with that?

22 MR. CHRISTENSON: As I sit here right now, I  
23 think you are probably correct as a matter of law, Your  
24 Honor.



Hearing

Page 18

1                   SPECIAL MASTER POPPITI: So if that occurs  
2 and if there is an agreement that, by virtue of having  
3 done that, it will proceed without taking exception to  
4 that finding and recommendation, and, on the other hand,  
5 if it is -- if the other results and even if there needs  
6 to be some attention given to whether or not that does  
7 close the door and I wrap that into whatever decision I  
8 write, saying, It is without prejudice, then we can all  
9 agree because it would otherwise stop, as the cases seem  
10 to suggest that it should, you have the opportunity to  
11 go to Judge Farnan to say, No, that's wrong, this  
12 process should go forward.

13                   I think what I am trying to do is look for  
14 those key issues, if there are any, that can be done at  
15 the front end shortly and quickly.

16                   My thought is the dualing motions to  
17 dismiss, the motion that has not been fully developed  
18 yet, I don't believe, motion to amend, and, you know,  
19 that may be it if it's me asking you to agree to at  
20 least two.

21                   MR. MILLER: Your Honor, could I address  
22 that?

23                   SPECIAL MASTER POPPITI: Yes, please. And  
24 if it's important to have additional conversation,



Hearing

Page 19

1 because I realize we kind of pushed this ball forward  
2 rather quickly since last week, then I am happy to  
3 permit that if you all think it would be helpful. Go  
4 ahead, Mr. Miller.

5 MR. MILLER: On the issue with regard to the  
6 dismissal, I think if -- I guess there is sort of three  
7 potential outcomes I could see. One would be dismissal  
8 with prejudice, the matter goes forward, dismissal  
9 without prejudice, there is no case that says it can't  
10 go forward and we are going forward, or dismissal  
11 without prejudice, and either there is or is not a case  
12 or the teachings of the law is such that the case -- the  
13 matter should not go forward. And only in the last of  
14 those three potential outcomes would this issue about a  
15 motion to dismiss serve any sort of gate keeping  
16 function potentially.

17 SPECIAL MASTER POPPITI: Right. I don't  
18 disagree with that.

19 MR. MILLER: So I am not sure -- so I can  
20 see, from a logic standpoint, a potential level of  
21 efficiency that could be addressed by having that first  
22 if, you know, if there is going to be a gate keeping  
23 function as part of that, although, as I say, we have  
24 looked for cases and haven't found any that say it is a

## Hearing

Page 20

1 gatekeeper. And we know, for example, in the Highway  
2 Equipment case that was recently a CAFC case, that, you  
3 know, the motion for the 285 motion was filed first,  
4 later on, the motion to dismiss was filed and the Third  
5 Circuit didn't indicate that that was an improper  
6 juxtaposition of the issues for the Court to decide.  
7 The Court decided them both simultaneously without any  
8 adverse comment, I think, from the Federal Circuit..

9 SPECIAL MASTER POPPITI: And I think,  
10 though, what you may be saying and what I may be  
11 proposing is if the decision, whether it's a decision  
12 that says "with prejudice," and, therefore, you can  
13 clearly proceed, or if it is a determination without  
14 prejudice with the additional conclusion that you still  
15 can proceed, then the agreement that I am asking you to  
16 consider is, in any case, if there is a finding, a  
17 report of recommendations that says "proceed," then you  
18 all agree that you go, you do proceed.

19 And that the only -- the opportunity, if you  
20 take an exception to Judge Farnan, would be in that  
21 circumstance where I say, "It's over," and that would be  
22 a finding, a recommendation and conclusion on the motion  
23 to dismiss without prejudice, and saying that "without  
24 prejudice" ends it.

Hearing

Page 21

1 MR. MILLER: Yes, Your Honor.

2 SPECIAL MASTER POPPITI: You can brief that.

3 MR. MILLER: You can brief the issue fairly  
4 quickly and if we had a hearing fairly quickly, I think,  
5 you know, the only downside is it would push the other  
6 more into the end of the year holidays, but, you know,  
7 we can work around that as well, I think.

8 SPECIAL MASTER POPPITI: I think we could  
9 and I am just concerned that if the process is  
10 protracted when there is disagreement with something  
11 that a Special Master does and it winds up going through  
12 the Court's hands and standing in line or alongside of,  
13 behind, or in front of, somebody else on the docket.

14 Mr. Christenson, is that something that you  
15 think you can agree with in terms of whether it's the  
16 motion to dismiss and the motion to amend, and if it's  
17 only those two?

18 MR. CHRISTENSON: Your Honor, that sounds  
19 workable to me. It sounds efficient. We, obviously,  
20 disagree with Mr. Miller's and ViewSonic's view of the  
21 law regarding with prejudice and without prejudice  
22 dismissals, but in terms of efficiency and how to  
23 structure this process, I do think there would be a  
24 significant gatekeeper issue involved if it's a without

Hearing

Page 22

1 prejudice dismissal, so I think that would be the  
2 efficient way to proceed.

3 MR. MILLER: On the issue of the motion to  
4 amend, I don't think it serves the same function because  
5 we have not found any cases that say that the 285  
6 motion, for example, is in any way limited by defenses  
7 that were or were not pled, and we asked LPL if they had  
8 any authority to suggest that it should, you know, I am  
9 not sure that that motion, really, is only -- if that  
10 motion is moot because of the covenant not to sue, then,  
11 obviously, the scope of the pleadings can't have an  
12 impact on the evidence the Court can consider under the  
13 285 motion.

14 SPECIAL MASTER POPPITI: Right.

15 MR. MILLER: If it's not moot, and LPL  
16 argues strenuously it is moot, if it's not moot, the  
17 only reason it's not moot is because it would have an  
18 impact on this, but I don't think it serves the  
19 gatekeeper function in any fashion similar to what the  
20 motions to dismiss might serve.

21 We could brief it and do those two up front  
22 if that's preferable, but I am not sure it's necessary.  
23 You know, it is substantially briefed at this point so  
24 we could finish that up and maybe it's efficient to just

Hearing

Page 23

1 do that and tick off.

2 SPECIAL MASTER POPPITI: I am not certain it  
3 is necessary but I think, for purposes of just putting  
4 it on a plate and moving it on, there is some degree of  
5 efficiency gained by that.

6 So, it seems to me that if you all can work  
7 out that initial briefing schedule with a proposed  
8 hearing date, whether we do that now or you do it  
9 off-line, I would like us to at least proceed in that  
10 fashion with respect to those two.

11 MS. ROMAN: I also want to make certain that  
12 both sides understand, then, that in conjunction with  
13 the motion to dismiss, one issue that would be briefed  
14 in there is whether or not without prejudice or with  
15 prejudice affects the prevailing party status.

16 SPECIAL MASTER POPPITI: Yes. I agree that  
17 that should be part of that.

18 Now, on the other ultimate matters, it seems  
19 to me we should at least establish a schedule assuming,  
20 without expecting, that the process is going to go  
21 forward to completion. And what I think I would like to  
22 do there, based on your submittals, is I do not believe  
23 that it is necessary, nor do I believe it's efficient,  
24 for there to be some determination on my part that there

Hearing

Page 24

1 is a prima facie showing.

2 I think the cases that you have referenced  
3 suggest to me that that is a discretionary decision on  
4 the part of either a Special Master or the Court. And I  
5 think, given the posture of the case and even if there  
6 is an expectation that there may be an application for  
7 additional discovery, and I think what I am hearing from  
8 Mr. Miller is that, in his first or second or third cut  
9 at this from his own analysis, suggests that there is  
10 sufficient evidence to move forward to a final hearing  
11 even if there is an application for additional  
12 discovery.

13 I believe and would conclude that it's going  
14 to be more efficient to move right into the process full  
15 board understanding that it would not make sense for  
16 there to be a development of an application for  
17 attorneys' fees until there has been a determination  
18 that it is an exceptional case.

19 So, it seems to me the attorneys' fees piece  
20 of it, in terms of the work that you would need to do to  
21 bring that to my desk, should wait until there is a  
22 determination that it is an exceptional case.

23 And, again, if there is a determination that  
24 it is exceptional as opposed to a determination to the

## Hearing

Page 25

1 contrary, it seems to me the most efficient way to do it  
2 is to agree that there be no exceptions taken to that  
3 determination until after there is a determination on  
4 the underlying application fee. I think that just makes  
5 sense even in light of the way all of the cases get  
6 brought to my attention deal with it.

7               They certainly package the determination of  
8 exceptional case and the determination of attorneys'  
9 fees within the same document and considered it at the  
10 same time.

11              So, I am accepting the view of ViewSonic  
12 that we not proceed in the fashion where I would make a  
13 prima facie -- require that there be a prima facie  
14 showing.

15              MR. CHRISTENSON: Cass Christenson for LPL.  
16 I am just wondering, in terms of discovery, there, you  
17 know, could be that, depending on what ViewSonic  
18 submits, LPL and/or ViewSonic may request supplemental  
19 discovery, and we had proposed that the discovery -- I  
20 guess the discovery issues, it seems to me, tie into the  
21 exceptionality considerations so that it sounds to me  
22 like the process you are discussing would entail  
23 briefing and consideration of any requests for  
24 supplemental discovery before you make a determination



Hearing

Page 26

1 regarding exceptionality.

2 SPECIAL MASTER POPPITI: That's correct.

3 And I think when Mr. Miller was suggesting how he viewed  
4 the record, from his vantage point, on the issue of  
5 discovery, I think you said, Mr. Miller, that you don't  
6 anticipate it but you certainly want to make sure that  
7 the process permits there to be a consideration of it  
8 and it would be at that stage where briefing was either  
9 occurring or had concluded.

10 MR. MILLER: That's correct. I mean, we  
11 view the issue in terms of what discovery might be  
12 necessary would really be responsive to an opposition of  
13 LPL raising in terms of missing, for example, the  
14 documents aren't admissible or could be -- I don't know  
15 what it could be.

16 SPECIAL MASTER POPPITI: There may be  
17 something.

18 MR. MILLER: There may be none.

19 SPECIAL MASTER POPPITI: And there may be  
20 none.

21 MR. MILLER: Right.

22 SPECIAL MASTER POPPITI: And that should be  
23 built into whatever schedule you will ultimately propose  
24 consistent with what you have agreed to with respect to

Hearing

Page 27

1 the front end motions and the process as I have  
2 identified it for the ultimate motion.

3 Now, I don't --

4 MR. MILLER: Your Honor.

5 SPECIAL MASTER POPPITI: Yes, Mr. Miller.

6 MR. MILLER: I have one other question. The  
7 question of the attorneys' fees being held back, is that  
8 on the attorneys' fees amount or the attorneys' fees  
9 entirely?

10 I think originally we were contemplating  
11 that the amount of the attorneys' fees and all the  
12 evidence that would go into the math would not be part  
13 of this original filing but that an award of attorneys'  
14 fees would be an appropriate remedy, that legal issue  
15 would be part of the motion.

16 SPECIAL MASTER POPPITI: The issue should be  
17 part of the motion.

18 MR. MILLER: I was trying to get  
19 clarification of whether or not that still is or is not?

20 SPECIAL MASTER POPPITI: Let's talk about  
21 it. I mean, it seems to me that the briefing of that, I  
22 don't see where it should not be in tandem with the  
23 briefing on the issue of exceptionality.

24 I am not sure it makes a great deal of sense

Hearing

Page 28

1 because I don't anticipate that the brief with respect  
2 to attorneys' fees in the context of what you will be  
3 claiming to be an exceptional case is going to be  
4 substantial in the sense of time expended, number of  
5 pages developed.

6 MR. MILLER: I agree with that. The other  
7 issue, all the other evidentiary issues underlying the  
8 attorneys' fees bills and those sorts of things,  
9 obviously if Your Honor decides not to grant attorneys'  
10 fees, then you wouldn't have that process take place and  
11 it seems to me that's a natural severing point. But the  
12 legal question of whether, that the Judge Jordan joined  
13 in the E Speed case which is before you about whether  
14 attorneys' fees legally should be recoverable as a  
15 result of the determination on the exceptional case, it  
16 seems to me should all be there for Your Honor's  
17 determination with the exceptionality issue.

18 SPECIAL MASTER POPPITI: I certainly want to  
19 hear what LPL says but I am inclined to agree.

20 MR. CHRISTENSON: LPL agrees that it could  
21 be done either of two ways. It can be done all together  
22 or it could be separated out. The cases we have  
23 supplied, including E Speed, speak to this, at least  
24 the Federal Circuit speaks to this as a two-step process

Hearing

Page 29

1 analytically.

2 SPECIAL MASTER POPPITI: Right.

3 MR. CHRISTENSON: So we have proposed that  
4 the briefing likewise be at a two-step process because,  
5 again, if there is no exceptional case, then there is no  
6 need to get into briefing and argument on the various  
7 discretionary factors that come into play as to whether  
8 attorneys' fees should or should not be granted.

9 SPECIAL MASTER POPPITI: I understand  
10 exactly what you are saying, but my question just simply  
11 goes -- rolls back to what I would anticipate in terms  
12 of your briefing on that issue. And then it just seems  
13 to me that it may be more efficient when you are turning  
14 your attention to this. I don't know how much time and  
15 effort is going to be wasted if I say no exceptionality,  
16 and, therefore, don't work on that section that deals  
17 with the attorneys' fees.

18 MR. CHRISTENSON: From LPL's perspective, I  
19 think it could be fairly significant. The reason is  
20 that the discretionary factors are going to really open  
21 this up into the conduct of all the parties in this case  
22 and everything that's transpired that speaks to whether  
23 or not it's appropriate to have some kind of shifting.

24 And, so, I think there is a lot wrapped up

Hearing

Page 30

1 in that that I think -- and I think it's mutually  
2 beneficial not to have to address all of that, but I  
3 understand what you are saying in terms of trying to get  
4 this to a conclusion. So if we need to wrap it all up  
5 together, we certainly can do that.

6 And then the question becomes: At what  
7 point do we have an argument, I guess, before you and at  
8 what point do we then have any supplemental briefing  
9 based on discovery and maybe this is not the point where  
10 we need to finalize the scheduling on all those issues.

11 There could be further -- it sounds to me  
12 like there could be further proceedings regardless.

13 MR. MILLER: I think, if I might address  
14 that?

15 SPECIAL MASTER POPPITI: Please.

16 MR. MILLER: I don't think it's going to be  
17 inefficient because the underlying 285 motion is also  
18 going to have issues about conduct during the course of  
19 the litigation, so I think that's going to be largely,  
20 you know, an issue that's going to be part and parcel of  
21 the Court's determination on exceptionality.

22 SPECIAL MASTER POPPITI: Yeah.

23 MR. MILLER: I don't see how. -- I, myself,  
24 don't think there is a, as Your Honor suggested, if an

Hearing

Page 31

1 answer comes out that this is not an exceptional case, I  
2 don't think there is going to be a ton of effort wasted  
3 in having briefed the question of whether attorneys'  
4 fees was an appropriate remedy for Your Honor to have  
5 granted had you gone the other way on that question.

6 So I think it's going to be most efficient  
7 to have them there concurrent with each other for Your  
8 Honor's consideration.

9 SPECIAL MASTER POPPITI: And I do understand  
10 that it is a two-step process, but I'd like to be in the  
11 position to take one step and then the next step within  
12 the same briefing so that the issue can ultimately be  
13 put to rest one way or the other.

14 So, with that, is it important for you all  
15 to talk about path forward in terms of deadlines and  
16 dates, or should we work with the dates that have been  
17 proposed by ViewSonic?

18 MR. CHRISTENSON: We have -- the first time  
19 we saw this was when ViewSonic submitted it. Some of  
20 these dates are agreed upon dates. Some of the dates  
21 are close to agreed upon dates, but there are some  
22 differences still that I think we probably could iron  
23 out with further discussion between counsel. I would  
24 prefer to have an opportunity in the first instance to

Hearing

Page 32

1 try to resolve these scheduling issues among counsel.

2 SPECIAL MASTER POPPITI: Mr. Miller.

3 MR. MILLER: Your Honor, I am happy to have  
4 a conversation with Mr. Christenson. What might be the  
5 most efficient, I don't know what Your Honor's schedule  
6 is like, but if we could put you on hold for five or ten  
7 minutes and just talk about, perhaps, the briefing on,  
8 if we are going to brief the dismissal and amendment and  
9 see if we can get that --

10 SPECIAL MASTER POPPITI: Moving.

11 MR. MILLER: And you can check your schedule  
12 and then we can work off-line on the remainder dates for  
13 the remainder of the issues.

14 SPECIAL MASTER POPPITI: Mr. Christenson.

15 MR. CHRISTENSON: That's fine.

16 SPECIAL MASTER POPPITI: Okay. Then what I  
17 will do is I will put you on hold, which means that you  
18 will be able to continue to confer, and it is -- the  
19 computer reads one way and the cell phone reads another  
20 way -- 3:45. Do you need 15 minutes or a little bit  
21 more?

22 MR. CHRISTENSON: Probably 10 minutes, I  
23 would think. Don't you think, Scott?

24 MR. MILLER: Yeah, I agree.



Hearing

Page 33

1 SPECIAL MASTER POPPITI: I will dial back in  
2 or take you off of hold in 10 minutes.

3 MR. CHRISTENSON: Thank you, Your Honor.

4 MR. KIRK: Thank you, Your Honor.

5 (Recess taken.)

6 SPECIAL MASTER POPPITI: What do you have in  
7 terms of a proposal, please? And then -- and we are  
8 just looking at the dates for the first two; is that  
9 correct? And you will talk about the others later?

10 MR. MILLER: Yes, Your Honor. First, for  
11 ViewSonic, we would like to file the motions promptly  
12 and have them be briefed on a schedule that would be  
13 akin to the schedule established for matters before the  
14 Special Master, so rather than having ten court days for  
15 an opposition and five days for a reply, we were  
16 proposing filing these, the motion to dismiss. The  
17 motion to amend, obviously, is briefed with the  
18 exception of the reply. That will be -- can be filed.

19 We were suggesting filing opening motions on  
20 motions to dismiss on Friday, November 2nd, and then a  
21 response in five court days which would be the 9th of  
22 November and a reply by the 13th, which would then allow  
23 you to have a hearing either later that week, perhaps on  
24 the 16th of November if you are available, or early that

Hearing

Page 34

1 week before Thanksgiving, the 19th or 20th or 21st,  
2 depending on what your schedule looks like.

3 MR. CHRISTENSON: Our view is a little bit  
4 different. Our view was that we should follow the  
5 regular ten business day/five business day time frame  
6 under the Local Rules, Your Honor.

7 And we were happy with the proposed start  
8 date of filing on November 5th that ViewSonic had  
9 proposed in their paper on October 23rd, and then I  
10 guess the responses would be due ten business days  
11 later, which I believe is November 20, and then five  
12 business days after that would be the replies, which is  
13 just the ordinary briefing schedule rather than an  
14 expedited schedule.

15 MR. MILLER: Which would then result we  
16 would have a hearing, under that scenario, probably in  
17 the first week of December probably.

18 SPECIAL MASTER POPPITI: Let me think about  
19 this for a moment.

20 Counsel, I would prefer the schedule using  
21 the Special Master's due process. I think it will get  
22 the matter before me more quickly. I do think that's  
23 important.

24 If there is a need to expand the number of

Hearing

Page 35

1 pages, then I am certainly happy to set that to be done.

2 The only question that I have is with  
3 respect to the hearing date, and this may adjust the  
4 number of days for purposes of filing all papers, I am  
5 not available on the 16th, the Friday before  
6 Thanksgiving, and I am not available on the 19th, which  
7 means that we would have to look at a hearing date on  
8 the 20th or 21st, and I don't want to be doing that to  
9 anyone even if it's a telecon. I don't know what your  
10 respective travel plans are, but if you're moving about  
11 on the 21st, I am just not sure you want to be  
12 sandwiching a hearing on the 20th.

13 So, my thought is, unless that's not a  
14 problem, my thought is to have the hearing on the 28th  
15 of November.

16 MR. MILLER: How far in advance of that  
17 hearing would you like to have the replies? I am just  
18 trying to think backwards.

19 SPECIAL MASTER POPPITI: My thought would be  
20 that I'd like whatever schedule we come up with in terms  
21 of adjusting the schedule to permit additional days, I  
22 think I would like to have everything by close of  
23 business my time on the 15th, so that's going to give  
24 you a few more days, is it not?

Hearing

Page 36

1 MR. CHRISTENSON: I am sorry, could you say  
2 again, close of business on which day, Your Honor?

3 SPECIAL MASTER POPPITI: Close of business  
4 on the 15th.

5 MS. ROMAN: It would allow for the filing of  
6 the motion to be done on November 5th with opposition on  
7 the 12th and then the replies on the 14th -- sorry,  
8 November 13th because the 12th is a holiday, as Mr. Kirk  
9 pointed out when we were off-line.

10 MR. MILLER: And then replies on the 15th.

11 MS. ROMAN: On the 15th.

12 SPECIAL MASTER POPPITI: Well, if that works  
13 for all of you, that's a schedule that would best suit  
14 me, to have the hearing on the 28th. And in terms of  
15 that hearing on the 28th, what would be the best time to  
16 begin that? I am assuming we are doing it by telecon?

17 MR. CHRISTENSON: That's fine with LPL, a  
18 telephonic hearing.

19 MR. MILLER: That would be fine with  
20 ViewSonic, too, Your Honor. I am generally open that  
21 day and I could -- the 20th is also available as well.  
22 You had asked about that. But either of those would be  
23 fine with me, and, generally, I am available either day.

24 MS. CRAMER: This is Kristen Cramer. I am

Hearing

Page 37

1 available either day.

2 MR. CHRISTENSON: LPL would prefer to do it  
3 on the 28th and we can do it, I think, any time that  
4 day.

5 MS. CRAMER: Your Honor, did we lose you?

6 SPECIAL MASTER POPPITI: I think, by virtue  
7 of doing that, you just re-engaged me. My question was,  
8 whether, Ms. Roman, you were going to be participating  
9 as well?

10 MS. ROMAN: I am, Your Honor. I am  
11 available.

12 SPECIAL MASTER POPPITI: The best time to do  
13 that from your time zone would be when, please?

14 MR. MILLER: From the West Coast, any time  
15 from nine a.m., which is noon your time, on, is fine  
16 with us.

17 SPECIAL MASTER POPPITI: Then let's do it at  
18 1:00 p.m. my time, please, on the 28th. Is anyone  
19 there?

20 MR. CHRISTENSON: Yes, Your Honor.

21 MR. KIRK: Yes, Your Honor.

22 MR. CHRISTENSON: Just so we are all clear  
23 on the briefing process, LPL understands your  
24 instruction that we are going to do this on an

Hearing

Page 38

1 abbreviated schedule, and the dates, I think, we were  
2 talking about are opening submissions on the 5th with  
3 responses or oppositions on the 13th and then replies on  
4 the 15th, if I understood correctly.

5 MR. MILLER: That's what we had done as  
6 well.

7 SPECIAL MASTER POPPITI: That's fine. Then  
8 the hearing on the --

9 MR. MILLER: And in terms of the pages,  
10 could you please clarify that as well?

11 SPECIAL MASTER POPPITI: I suggested that if  
12 you need to --

13 MS. ROMAN: I lost you.

14 SPECIAL MASTER POPPITI: I think what may be  
15 happening is somebody may be using a computer close to  
16 the phone or keyboard that may be interfering with the  
17 transmission.

18 MS. ROMAN: We have you now.

19 SPECIAL MASTER POPPITI: Good.

20 MS. ROMAN: We have lost you again.

21 SPECIAL MASTER POPPITI: I think that if  
22 there is a need to expand the number of pages, let's  
23 just discuss that now.

24 MR. CHRISTENSON: I think, from LPL's

Hearing

Page 39

1 standpoint, because there are some procedural issues  
2 here that need to be, I think, addressed in some detail,  
3 it would make sense to have briefing that looks like  
4 regular briefing in the Delaware District and perhaps we  
5 could say, as far as page limits, 20 for opening, ten  
6 for opposition, and five for reply would be LPL's  
7 proposal, double spaced, of course.

8 SPECIAL MASTER POPPITI: Mr. Miller.

9 MR. MILLER: I had 15, 15, and five, but I  
10 don't know whether we need a little bit more in  
11 opposition than ten, but I think we can do 15 on the  
12 opening, I'd rather have 15 in the opposition, and then  
13 reply of five would be fine, if that's okay, Cass?

14 MR. CHRISTENSON: Well, I guess my thinking  
15 is to do it more along the lines of a regular approach,  
16 which I think is you get half the pages on the  
17 opposition, that was my thinking. If we are both filing  
18 motions, it's going to be fairly voluminous as it is.  
19 It seems to me it makes more sense to allow the parties  
20 to develop their argument up front and then have ten  
21 pages to respond.

22 MR. MILLER: That's fine.

23 SPECIAL MASTER POPPITI: Then that's the way  
24 it will be. And Mr. -- let's see. Yeah. That's fine.



Hearing

Page 40

1 We can do that that way. If somebody will prepare a  
2 form of order memorializing this, that would be --

3 MR. KIRK: I will be happy to, Your Honor.

4 MS. ROMAN: We lost communication again,  
5 Your Honor.

6 SPECIAL MASTER POPPITI: Okay. I don't know  
7 what's happening. Is there anything else, then, we have  
8 to deal with today, please?

9 MR. CHRISTENSON: Not from LPL, Your Honor.  
10 Thank you.

11 SPECIAL MASTER POPPITI: Then what I expect  
12 you need to do, then, is meet and confer on the rest of  
13 the schedule, and if you need me to assist with any of  
14 that, then simply call Mary LeVan back. The only time I  
15 know that I will be unavailable for the balance of the  
16 week is Friday through about 3:00 only on Friday.  
17 Otherwise, I am available to take a phone call this week  
18 and you can call about next week's availability as well.

19 MR. CHRISTENSON: One quick question from  
20 LPL's standpoint: Do you have any sense, Your Honor, of  
21 how soon you would be in a position to issue a decision  
22 on the dismissal motions because that may impact how we  
23 structure the remaining schedule?

24 SPECIAL MASTER POPPITI: Well, let's do

Hearing

Page 41

1 this. The hearing is going to be on the 28th.

2 MS. ROMAN: Your Honor, we have lost you.

3 SPECIAL MASTER POPPITI: The hearing is  
4 going to be on the 28th. If I am in a position to make  
5 the determination on the record at the hearing, I will.  
6 And what I would do is do it in a manner similar to the  
7 way I have done it where I asked that the prevailing  
8 party memorialize it for purposes of having the written  
9 record just for efficiency purposes.

10 If I am unable to do it on the day of the  
11 hearing, I will commit to doing it not later than  
12 December 7.

13 MR. CHRISTENSON: Thank you. That's  
14 helpful.

15 SPECIAL MASTER POPPITI: So it would either  
16 be on the 28th at the hearing and not later than  
17 December 7. And I certainly don't -- I would anticipate  
18 that that deadline would be in the proposed form of  
19 order.

20 MR. KIRK: I will put it in, Your Honor.

21 MR. CHRISTENSON: Thank you, Your Honor.

22 SPECIAL MASTER POPPITI: Thank you all.

23 (The hearing was concluded at 4:15 p.m.)

24

Hearing

Page 42

1 C E R T I F I C A T E

2 STATE OF DELAWARE:

3 NEW CASTLE COUNTY:

4 I, Renee A. Meyers, a Registered Professional  
5 Reporter, within and for the County and State aforesaid,  
6 do hereby certify that the foregoing teleconference was  
7 taken before me, pursuant to notice, at the time and  
8 place indicated; that the teleconference was correctly  
9 recorded in machine shorthand by me and thereafter  
10 transcribed under my supervision with computer-aided  
11 transcription; that the foregoing teleconference is a  
12 true record; and that I am neither of counsel nor kin to  
13 any party in said action, nor interested in the outcome  
14 thereof.

15 WITNESS my hand this 25th day of October A.D.  
16 2007.

17

18

19 RENEE A. MEYERS  
20 REGISTERED PROFESSIONAL REPORTER  
21 CERTIFICATION NO. 106-RPR  
22 (Expires January 31, 2008)

23

24